

TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 1. DIVISION OF WORKERS' COMPENSATION –
QUALIFIED MEDICAL EVALUATOR REGULATIONS

§ 1. Definitions

As used in the regulations in Chapter 1:

- (a) "Accreditation" means the conferring of recognized status as a provider of physician education by the Administrative Director.
- (b) "ACOEM" shall have the same meaning as section 9792.20(a), and "ACOEM Practice Guidelines" shall have the same meaning as section 9792.20(b) of Title 8 of the California Code of Regulations.
- (c) "Administrative Director" means the administrative director of the Division of Workers' Compensation of the State of California Department of Industrial Relations, and includes his or her designee.
- (d) "Agreed Panel QME" means the Qualified Medical Evaluator described in Labor Code section 4062.2(c), that the claims administrator, or if none the employer, and a represented employee agree upon and select from a QME panel list issued by the Medical Director without using the striking process. An Agreed Panel QME shall be entitled to be paid at the same rate as an Agreed Medical Evaluator under section 9795 of Title 8 of the California Code of Regulations for medical/legal evaluation procedures and medical testimony.
- (e) "AMA Guides" means American Medical Association, Guides to the Evaluation of Permanent Impairment [Fifth Edition].
- (f) "AME" means Agreed Medical Evaluator, a physician selected by agreement between the claims administrator, or if none the employer, and a represented employee to resolve disputed medical issues referred by the parties in a workers' compensation proceeding.
- (g) "Appeals Board" means the Workers' Compensation Appeals Board within the State of California Department of Industrial Relations.
- (h) "Audit" means a formal evaluation of a continuing education program, disability evaluation report writing course, or an accredited education provider which is conducted at the request of the Medical Director.
- (i) "Comprehensive Medical-Legal Evaluation" means a medical evaluation performed pursuant to Labor Code Sections 4060, 4061, 4062, 4062.1, 4062.2 or 4067 and meeting the requirements of section 9793(c) of Title 8 of the California Code of Regulations.
- (j) "Claims Administrator" means the person or entity responsible for the payment of compensation

for any of the following: a self-administered insurer providing security for the payment of compensation required by Divisions 4 and 4.5 of the Labor Code, a self-administered self-insured employer, a group self-insurer, an insured employer, the director of the Department of Industrial Relations as administrator for the Uninsured Employers Benefits Trust Fund (UEBTF) and for the Subsequent Injuries Benefit Trust Fund (SIBTF), a third-party claims administrator for a self-insured employer, insurer, legally uninsured employer, group self-insurer, or joint powers authority, and the California Insurance Guarantee Association (CIGA). The UEBTF shall only be subject to these regulations after proper service has been made on the uninsured employer and the Appeals Board has obtained jurisdiction over the UEBTF by joinder as a party.

(k) "Continuing Education Program" means a systematic learning experience (such as a course, seminar, or audiovisual or computer learning program) which serves to develop, maintain, or increase the knowledge, skills and professional performance of physicians who serve as Qualified Medical Evaluators in the California workers' compensation system.

(l) "Course" means the 12 hours of instruction in disability evaluation report writing which is required of a Qualified Medical Evaluator prior to appointment. A course must be approved by the Administrative Director.

(m) "Credit Hour" means a sixty minute hour. A credit hour may include time for questions and answers related to the presentation.

(n) "Direct medical treatment" means that special phase of the physician-patient relationship during which the physician: (1) attempts to clinically diagnose and to alter or modify the expression of a non-industrial illness, injury or pathological condition; or (2) attempts to cure or relieve the effects of an industrial injury.

(o) "Distance Learning" means an education program in which the instructor and student are in different locations, as in programs based on audio or video tapes, computer programs, or printed educational material.

(p) "DEU" is the Disability Evaluation Unit under the Administrative Director responsible for issuing summary disability ratings.

(q) "Education Provider" means the individual or organization which has been accredited by the Administrative Director to offer physician education programs. There are two categories of providers: (1) the Administrative Director; and (2) individuals, partnerships, or corporations, hospitals, clinics or other patient care facilities, educational institutions, medical or health-related organizations whose membership includes physicians as defined in Labor Code section 3209.3, organizations of non-medical participants in the California workers' compensation system, and governmental agencies. In the case of a national organization seeking accreditation, the California Chapter or organization affiliated with the national organization shall be accredited by the Administrative Director in lieu of the national organization.

(r) "Employer" means any employer within the meaning of Labor Code section 3300, including but not limited to, any of the following: (1) an uninsured employer and the Uninsured Employers Benefits Trust Fund (UEBTF) pursuant to Labor Code Section 3716, (2) an insured employer, (3) a

self-insured employer and (4) a lawfully uninsured employer. The UEBTF shall only be subject to these regulations after proper service has been made on the uninsured employer and the Appeals Board has obtained jurisdiction over the UEBTF by joinder as a party.

(s) "Evaluator" means any of the following: "Qualified Medical Evaluator", "Agreed Medical Evaluator", "Agreed Panel QME" or "Panel QME", as appropriate in a specific case.

(t) "Follow-up comprehensive medical-legal evaluation" means a medical evaluation performed pursuant to Labor Code sections 4060, 4061, 4062, 4062.1, 4062.2 or 4067 and meeting the requirements of Section 9793(f) of Title 8 of the California Code of Regulations.

(u) "Medical Treatment Utilization Schedule" or "MTUS" means the treatment utilization schedule adopted by the Administrative Director of the Division of Workers' Compensation as required by Labor Code section 5307.27 and sections 9792.20 et seq of Title 8 of the California Code of Regulations.

(v) "Medical Director" means the Medical Director appointed by the Administrative Director pursuant to Labor Code section 122 and includes any Associate Medical Directors when acting as his or her designee.

(w) "Mental health record" means a medical treatment or evaluation record created or reviewed by a licensed physician as defined in Labor Code section 3209.3 in the course of treating or evaluating a mental disorder.

(x) "Panel QME" means the physician, from a QME panel list provided by the Medical Director, who is selected under Labor Code section 4062.1(c) when the injured worker is not represented by an attorney, and when the injured worker is represented by an attorney, the physician whose name remains after completion of the striking process or who is otherwise selected as provided in Labor Code section 4062.2(c) when the parties are unable to agree on an Agreed Panel QME.

(y) "Physician's office" means a bona fide office facility which is identified by a street address and any other more specific designation such as a suite or room number, ~~and~~ which contains the usual and customary equipment for the evaluation and treatment appropriate to the physician's medical specialty or practice.

(z) "Qualified Medical Evaluator (QME)" means a physician licensed by the appropriate licensing body for the state of California and appointed by the Administrative Director pursuant to Labor Code section 139.2, provided however, that acupuncturist QMEs shall not perform comprehensive medical-legal evaluations to determine disability.

(aa) "QME competency examination" means an examination administered by the Administrative Director for the purpose of demonstrating competence in evaluating medical-legal issues in the workers' compensation system. This examination shall be given at least as often as twice annually.

(bb) "QME competency examination for acupuncturists" means an examination administered by the Administrative Director for the purpose of demonstrating competence in evaluating medical-legal issues in the workers' compensation system which are not pertinent to the determination of disability,

but should be understood by acupuncturist QMEs. This examination shall be given at least as often as twice annually.

(cc) "Signature" means, unless explicitly provided otherwise, an original, handwritten signature.

~~(ee dd)~~ "Significant Financial Interest or Affiliation Held by Faculty", as used in sections 11.5, 14, 55, 118 and 119 pertaining to faculty of approved disability report writing or continuing education courses under these regulations, means grant or research support; status as a consultant, member of a speakers' bureau, or major stock shareholder; or other financial or material interest for the program faculty member or his or her family.

~~(dd ee)~~ "Specified Financial Interests" means having a shared financial interest that must be reported or disclosed pursuant to sections 11, 17, 29, 50 or on the "SFI Form 124" attached to QME Form 100, 103 or 104 as required by these regulations.

~~(ee ff)~~ "Supplemental medical-legal evaluation" means a medical evaluation performed pursuant to Labor Code sections 4060, 4061, 4062, 4062.1, 4062.2 or 4067 and meeting the requirements of section 9793(l) of Title 8 of the California Code of Regulations.

~~(ff gg)~~ "Treating physician" means a physician who has provided direct medical treatment to an employee which is reasonably required to cure or relieve the effects of an industrial injury pursuant to section 4600 of the Labor Code.

~~(gg hh)~~ "Unrepresented employee" means an employee not represented by an attorney.

Authority cited: Sections 53, 133, 139.2, 4060, 4061, 4062, 4062.1, 4062.2 and 5307.3, Labor Code.
Reference: Sections 139.2, 139.3, 139.31, 139.4, 139.43, 3716, 4060, 4061, 4061.5, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067, 4600, 4604.5 and 4660-4664, Labor Code.

§ 10. Appointment of QMEs

(a) Applications for appointment as a QME shall be submitted on the form in section 100 (QME Form 100). The completed application form, and any supporting documentation as required by the application, shall be filed at the Administrative Director's office listed on the form in section 100. Upon his or her approval of each application form and supporting documentation, the Administrative Director shall certify, as eligible to sit for the QME competency examination, those applicants who meet all of the statutory and regulatory eligibility requirements. Any application for appointment may be rejected if it is incomplete, contains false information or does not contain the required supporting documentation listed in section 11.

(b) A physician may concurrently hold separate QME certifications at up to five physician's office locations chosen by the QME, and up to five additional physician's office locations in ZIP codes in which fewer than five QMEs are currently certified in the QME's medical specialty. Each office location must be located in California, identified by a street address and any other more specific designation such as a suite or room number, must contain the usual and customary equipment for the evaluation and treatment appropriate to the physician's medical specialty or practice, and must comply with the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), section 11135 of the California Government Code,

section 51 et.seq. of the California Civil Code and other applicable state and federal disability laws. The QME must have a reasonable basis to believe that each office location will be available for the QME's use during the QME's current period of appointment.

(b c) The Administrative Director may deny appointment or reappointment to any physician who has performed a QME evaluation or examination without valid QME certification at the time of examining the injured worker or the time of signing the initial or follow-up evaluation report. An applicant serving a period of probation imposed by the applicant's professional licensing board or agency may be allowed to take the QME examination while on probationary license status. Applications for appointment or reappointment from physicians who are on probationary license status with a California licensing board or agency while the QME application is pending shall be reviewed by the Medical Director on a case-by-case basis consistent with the provisions of Labor Code section 139.2(m).

(e d) No physician who has been convicted of a felony or misdemeanor related to his or her practice shall be appointed or reappointed as a QME. An applicant who has been convicted of any other type of felony or misdemeanor may be denied appointment or reappointment.

(d e) Any physician who, while under investigation or after the service of a statement of issues or accusation for alleged violations of these regulations or the Labor Code, withdraws his or her application for appointment or reappointment, resigns or fails to seek reappointment as a QME, shall be subject to having the disciplinary process reactivated whenever an application for appointment or re-appointment is subsequently filed. In the event any of the alleged violations are found to have occurred, the physician's application for appointment or reappointment may be denied by the Administrative Director.

NOTE: Form is available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Authority cited: Sections 133, 139.2 and 5307.3, Labor Code; and Section 730, Business and Professions Code.

Reference: Sections 139.2, 4060, 4061, 4062, 4062.1 and 4062.2, Labor Code; and Section 730, Business and Professions Code.

§ 12. Recognition of Specialty Boards

The Administrative Director shall recognize only those specialty boards recognized by the respective California licensing boards for physicians and surgeons as defined in Labor Code section 3209.3.

Authority cited: Sections 133, 139.2, 139.4, 139.43, 139.45 and 5307.3, Labor Code.

Reference: Sections 139.2(b)(3)(A) and 3209.3, Labor Code; Section 651(i), Business and Professions Code.

§ 13. Physician's Specialty

A physician's and surgeon's specialty(ies) is one for which the physician is board certified or, one for which a medical doctor or doctor of osteopathy has completed a postgraduate specialty training as defined in Section 11(a)(2)(A) or held an appointment as a QME in that specialty on June 30, 2000, pursuant to Labor Code Section 139.2. To be listed as a QME in a particular specialty, the physician's and surgeon's licensing board must recognize the designated specialty board and the applicant for QME status must have provided to the Administrative Director documentation from the relevant board of certification or qualification.

Authority cited: Sections 133, 139.2, 139.4, 139.43, 139.45 and 5307.3, Labor Code.

Reference: Section 139.2(b)(3)(A), Labor Code; and Section 651(i), Business and Professions Code.

§ 17. Fee Schedule for QME

(a) All physicians seeking QME status shall be required to pay to the Workers' Compensation Administration Revolving Fund, the following fee:

(1) QMEs performing 0-10 comprehensive medical-legal evaluations, \$ 110 during each of the years or any part of a year the physician retains his or her eligibility on the approved QME list.

(2) QMEs performing 11-24 comprehensive medical-legal evaluations, \$ 125 during each of the years or any part of a year the physician retains his or her eligibility on the approved QME list.

(3) QMEs performing 25 or more comprehensive medical-legal evaluations, \$ 250 during each of the years or any part of a year the physician retains his or her eligibility on the approved QME list.

(b) Individual QMEs who perform comprehensive medical-legal evaluations at more than one physician's office location shall be required to pay an additional \$ 100 annually per additional office location. ~~Each physician's office listed with the Medical Director must be located within California, be identified by a street address and any other more specific location such as a suite or room number, and must contain the usual and customary equipment for the type of evaluation appropriate to the QME's medical specialty or scope of practice.~~ This requirement applies to all QMEs regardless of whether the QME is a sole practitioner, or corporation, or partnership pursuant to Corporations Code Chapter 2 (sections 15501-15533), Chapter 3 (sections 15611-15723) and/or Chapter 5 (sections 16100-16962).

(c) The Administrative Director may waive or return the statutory fee in the amount of \$ 110 for the completion of a survey of QMEs to validate the QME competency examination. The term "completion of the survey" means the return of the survey to the testing agency designated by the Administrative Director on or before the date for the return of the survey.

(d) At the time of paying the appropriate QME annual fee, each QME shall also complete and forward to the Medical Director with the annual fee a completed QME SFI Form 124, providing updated information about the QME's specified financial interests as defined in section 29 of Title 8 of the California Code of Regulations.

Authority cited: Section 133, 139.2 and 5307.3, Labor Code. Reference: Section 139.2, Labor Code.

§ 30. QME Panel Requests

(a) Unrepresented cases. Whenever an injured worker is not represented by an attorney and either the employee or the claims administrator requests a QME panel pursuant to Labor Code section 4062.1, the request shall be submitted on the form in section 105 (Request for QME Panel under Labor Code Section 4062.1) (See, 8 Cal. Code Regs. § 105). The claims administrator (or if none the employer) shall provide Form 105 along with the Attachment to Form 105 (How to Request a Qualified Medical Evaluator if you do not have an Attorney) to the unrepresented employee by means of personal delivery or by first class or certified mailing. &&&&

(b) Represented cases. Requests for a QME panel in a represented case, for all cases with a date of injury on or after January 1, 2005, and for all other cases where represented parties agree to obtain a panel of Qualified Medical Evaluators pursuant to the process in Labor Code section 4062.2, shall be submitted on the form in section 106 (Request for a QME Panel under Labor Code Section 4062.2) (See, 8 Cal. Code Regs. § 106), attaching the party requesting a QME panel shall: the requesting party's written request prescribed by Labor Code section 4062.2, subsection (b) which shall, consistent with the information included on Form 106:

1) indicate the date sent;

~~1) 2) identify the one or more disputed issue~~ medical issues that requires a comprehensive medical/legal report to be resolved and the relevant Labor Code section for each disputed issue identified;

3) identify the specific treating physician's report(s) that is the basis for each disputed issue identified in the written request to agree to an Agreed Medical Evaluator;

~~2) 4) attach a copy of the written proposal, naming~~ name one or more physicians to be an Agreed Medical Evaluator; ~~that was sent to the opposing party once the dispute arose;~~

3) 5) designate a specialty for the QME panel requested;

4) 6) state the specialty preferred by the opposing party, if known; and

5) 7) state the specialty of the treating physician.

In represented cases with dates of injury prior to January 1, 2005, and only upon the parties' agreement to obtain a QME panel pursuant to Labor Code section 4062.2, the party requesting a QME panel shall submit QME Form 106 in compliance with this section and provide written evidence of the parties' agreement. Once such a panel in a represented case with a date of injury prior to January 1, 2005, is issued, the parties shall be bound by the timelines and process as described in Labor Code section 4062.2.

(c) In the event a request form is incomplete, or improperly completed, so that a QME panel selection cannot properly be made, the request form shall be returned to the requesting party with an explanation of why the QME panel selection could not be made. The Medical Director also may

delay issuing a new QME panel, if necessary, until the Medical Director receives additional reasonable information requested from a party or both parties, needed to resolve the panel request. Reasonable information as used in this subdivision includes but is not limited to whether a QME panel previously issued to the injured worker was used.

(d)(1) After a claim form has been filed, the claims administrator, or if none the employer, may request a panel of Qualified Medical Evaluators only as provided in Labor Code section 4060, to determine whether to accept or reject a claim within the ninety (90) day period for rejecting liability in Labor Code section 5402(b), and only after providing evidence of compliance with Labor Code Section 4062.1 or 4062.2.

(d)(2) Once the claims administrator, or if none the employer, has accepted as compensable injury to any body part in the claim, a request for a panel QME may only be filed based on a dispute arising under Labor Code section 4061 or 4062.

(d)(3) Whenever an injury or illness claim of an employee has been denied entirely by the claims administrator, or if none by the employer, only the employee may request a panel of Qualified Medical Evaluators, as provided in Labor Code sections 4060(d) and 4062.1 if unrepresented, or as provided in Labor Code sections 4060(c) and 4062.2 if represented.

(d)(4) After the ninety (90) day period specified in Labor Code section 5402(b) for denying liability has expired, a request from the claims administrator, or if none from the employer, for a QME panel to determine compensability shall only be issued upon presentation of a finding and decision issued by a Workers' Compensation Administrative Law Judge that the presumption in section 5402(b) has been rebutted and an order that a QME panel should be issued to determine compensability. The order shall also specify the residential or, if applicable, the employment-based zip code from which to select evaluators and either the medical specialty of the panel or which party may select the medical specialty.

(e) If the request form is submitted by or on behalf of an employee who no longer resides within the state of California, the geographic area of the QME panel selection within the state shall be determined by agreement between the claims administrator, or if none the employer, and the employee. If no agreement can be reached, the geographic area of the QME panel selection shall be determined for an unrepresented employee by the employee's former residence within the state, and for a represented employee by the office of the employee's attorney.

(f) To compile a panel list of three (3) independent QMEs randomly selected from the specialty designated by the party holding the legal right to request a QME panel, the Medical Director shall exclude from the panel, to the extent feasible, any QME who is listed by another QME as a business partner or as having a shared specified financial interest, as those terms are defined in sections 1 and 29 of Title 8 of the California Code of Regulations.

(g) The panel request in a represented case must be sent to the Medical Unit address on the QME Form 106 by means of first class mail delivered by the United States postal service. The Medical Unit will not accept panel requests in represented cases that are delivered in person by a party, the party's attorney, any other person or by other commercial courier or delivery services.

(h) The time periods specified in Labor Code sections 4062.1(c) and 4062.2(c), respectively, for selecting an evaluator from a QME panel and for scheduling an appointment, shall be tolled whenever the Medical Director asks a party for additional information needed to resolve the panel request. These time periods shall remain tolled until the date the Medical Director issues either a new QME panel or a decision on the panel request.

NOTE: Forms referred to above are available at no charge by downloading from the web at www.dir.ca.gov/dwc/forms.html or by requesting at 1-800-794-6900.

Authority cited: Sections 133, 139.2, 4061, 4062 and 5307.3, Labor Code.

Reference: Sections 139.2, 4061, 4062, 4062.1, 4062.2, 4062.3, 4064 and 4067, Labor Code.

§ 31.1. QME Panel Selection Disputes in Represented Cases

(a) When the Medical Director receives two or more panel selection forms pursuant to Labor Code section 4062.2 from opposing parties on the same day and the forms designate different physician specialties for the QME panel, the Medical Director shall use the following procedures:

1) If one party requests the same specialty as that of the treating physician, the panel shall be issued in the specialty of the treating physician unless the Medical Director is persuaded by supporting documentation provided by the requestor that explains the medical basis for the requested specialty;

2) If no party requests a panel in the specialty of the treating physician, the Medical Director shall select a specialty appropriate for the medical issue in dispute and issue a panel in that specialty.

3) Upon request by the Medical Director, the party requesting the panel shall provide additional relevant medical records to assist the Medical Director in determining the appropriate specialty.

~~(b)~~ 4) In the event a party in a represented case wishes to request a QME panel pursuant to Labor Code section 4062.2 in a specialty other than the specialty of the treating physician, the party shall submit with the panel request form any relevant documentation supporting the reason for requesting a different specialty.

~~(c)~~ (d) In the event the Medical Director is unable to issue a QME panel in a represented case within thirty (30) calendar days of receiving the request, either party may seek an order from a Workers' Compensation Administrative Law Judge that a QME panel be issued. Any such order shall specify the specialty of the QME panel, the zip code from which to search for QMEs in that specialty, the date of injury and the parties' addresses, or the party to be designated to select the specialty and the timeframe for requesting the QME panel.

Authority cited: Sections 133, 139.2 and 5307.3, Labor Code.

Reference: Sections 139.2, 4060, 4061 and 4062, Labor Code.

§ 33. Unavailability of QME

(a) A QME who will be unavailable to schedule or perform comprehensive medical evaluations as an Agreed Panel QME or as a Panel QME for a period of 14 days, or up to a maximum of 90 days

during ~~a one year fee period~~, any calendar year for any reason shall notify the Medical Director by submitting the form in Section 109 (Notice of Qualified Medical Evaluator Unavailability) (see, 8 Cal. Code Regs. § 109) at least 30 days before the period of unavailability is to begin. The Medical Director may, in his or her discretion, grant unavailable status within the 30-day notice period for good cause, including but not limited to medical or family emergency.

(b) At the time of requesting unavailable status, the QME shall provide the Medical Director with a list of any and all comprehensive medical/legal evaluation examinations already scheduled during the time requested for unavailable status. The QME shall indicate whether each such examination is being rescheduled or the QME plans to complete the exam and report while in unavailable status.

(c) A QME who is unavailable as provided in subdivision (a) shall not perform any new evaluation examinations as a QME until the physician returns to active QME status. Such a QME may complete medical-legal examinations and reports already scheduled and reported to the Medical Director, as well as reports for evaluation examinations performed prior to becoming unavailable under subdivision (a). Such a QME also may complete supplemental reports.

(d) It shall not be an acceptable reason for unavailability that a QME does not intend to perform comprehensive medical-legal evaluations for unrepresented workers. A QME who has filed notifications for unavailability totaling more than ninety (90) days during ~~the QME fee period~~ any calendar year without good cause may be denied reappointment subject to section 52 of Title 8 of the California Code of Regulations. Good cause includes, but is not limited to, sabbaticals, or death or serious illness of an immediate family member.

(e) If a party with the legal right to schedule an appointment with a QME is unable to obtain an appointment with a selected QME within sixty (60) days of the date of the appointment request, that party may waive the right to a replacement in order to accept an appointment no more than ninety (90) days after the date of the party's initial appointment request. When the selected QME is unable to schedule the evaluation within ninety (90) days of the date of that party's initial appointment request, either party may report the unavailability of the QME and the Medical Director shall issue a replacement pursuant to section 31.5 of Title 8 of the California Code of Regulations upon request, unless both parties agree in writing to waive the ninety (90) day time limit for scheduling the initial evaluation.

(f) If a QME fails to notify the Medical Director, by submitting the form in section 109 (Notice of Qualified Medical Evaluator Unavailability) (see, 8 Cal. Code Regs. § 109), of his or her unavailability at a medical office at least thirty (30) days prior to the period the evaluator becomes unavailable, the Medical Director may designate the QME to be unavailable at that location for thirty (30) days from the date the Medical Director learns of the unavailability.

(g) Whenever the Medical Director is notified by a party seeking an appointment with a Qualified Medical Evaluator, or otherwise becomes aware, that the QME is not available and not responding to calls or mail at a location listed for the QME, a ~~certified~~ letter will be sent to the QME by the Medical Director, addressed to the address of record filed with the QME's licensing board, regarding his/her unavailability. If the Medical Director does not receive a response within fifteen (15) days of the date the ~~certified~~ letter is mailed, then the QME will be made unavailable at that location. The

time a QME is placed on unavailable status pursuant to this subdivision shall count toward the ninety (90) day limit in subdivision 33(a) of Title 8 of the California Code of Regulations.

Authority cited: Sections 133, 139.2 and 5307.3, Labor Code.

Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.5 and 4067, Labor Code.

§ 35. Exchange of Information and Ex Parte Communications

(a) The claims administrator, or if none the employer, shall provide, and the injured worker may provide, the following information to the evaluator, whether an AME, Agreed panel QME or QME:

- (1) All records prepared or maintained by the employee's treating physician or physicians;
- (2) Other medical records, including any previous treatment records or information, which are relevant to determination of the medical issue(s) in dispute;
- (3) A letter outlining the issues that the evaluator is requested to address in the evaluation, which shall be served on the opposing party no less than 20 days in advance of the evaluation;
- (4) Whenever the treating physician's recommended medical treatment is disputed, a copy of the treating physician's report recommending the medical treatment with all supporting documents, a copy of claims administrator's, or if none the employer's, decision to approve, delay, deny or modify the disputed treatment with the documents supporting the decision, and all other relevant communications about the disputed treatment exchanged during the utilization review process required by Labor Code section 4610;
- (5) Non-medical records, including films and videotapes, which are relevant to determination of medical issue(s) in dispute, after compliance with subdivision 35(c) of Title 8 of the California Code of Regulations.

(b)(1) All communications ~~by the parties with~~ between any party and the evaluator, ~~whether initiated by the employee, the claims administrator, the evaluator, or their attorneys,~~ shall be in writing and sent simultaneously to the opposing party ~~when sent to the medical evaluator,~~ except as otherwise provided in subdivisions (c), (k) and (l) of this section.

(2) Represented parties who have selected an Agreed Medical Evaluator or an Agreed Panel QME shall, as part of their agreement, agree on what information is to be provided to the AME or the Agreed Panel QME, respectively.

(c) At least twenty (20) days before the information is to be provided to the evaluator, the party providing such medical and non-medical reports and information shall serve it on the opposing party. Mental health records that are subject to the protections of Health and Safety Code section 123115(b) shall not be served directly on the injured employee, but may be provided to a designated health care provider as provided in section 123115(b)(2), and the injured employee shall be notified in writing of this option for each such record to be provided to the evaluator. In both unrepresented and represented cases the claims administrator shall attach a log to the front of the records and information being sent to the opposing party that identifies each record or other information to be

sent to the evaluator and lists each item in the order it is attached to or appears on the log. In a represented case, the injured worker's attorney shall do the same for any records or other information to be sent to the evaluator directly from the attorney's office, if any. The claims administrator, or if none the employer, shall include a cover letter or other document when providing such information to the employee which shall clearly and conspicuously include the following language: "Please look carefully at the enclosed information. It may be used by the doctor who is evaluating your medical condition as it relates to your workers' compensation claim. If you do not want the doctor to see this information, you must let me know within 10 days."

(d) If the opposing party objects within 10 days to any non-medical records or information proposed to be sent to an evaluator, those records and that information shall not be provided to the evaluator unless so ordered by a Workers' Compensation Administrative Law Judge.

(e) In no event shall any party forward to the evaluator: (1) any medical/legal report which has been rejected by a party as untimely pursuant to Labor Code section 4062.5; (2) any evaluation or consulting report written by any physician other than a treating physician, the primary treating physician or secondary physician, or an evaluator through the medical-legal process in Labor Code sections 4060 through 4062, that addresses permanent impairment, permanent disability or apportionment under California workers' compensation laws, unless that physician's report has first been ruled admissible by a Workers' Compensation Administrative Law Judge; or (3) any medical report or record or other information or thing which has been stricken, or found inadequate or inadmissible by a Workers' Compensation Administrative Law Judge, or which otherwise has been deemed inadmissible to the evaluator as a matter of law.

(f) Either party may use discovery to establish the accuracy or authenticity of non-medical records or information prior to the evaluation.

(g) Copies of all records being sent to the evaluator shall be sent to all parties except as otherwise provided in section (d) and (e). Failure to do so shall constitute ex parte communication within the meaning of subdivision (k) below by the party transmitting the information to the evaluator.

(h) In the event that the unrepresented employee schedules an appointment within 20 days of receipt of the panel, the employer or if none, the claims administrator shall not be required to comply with the 20 day time frame for sending medical information in subsection (c) provided, however, that the unrepresented employee is served all non-medical information in subdivision (c) 20 days prior to the information being served on the QME so the employee has an opportunity to object to any non-medical information.

(i) In the event that a party fails to provide to the evaluator any relevant medical record which the evaluator deems necessary to perform a comprehensive medical-legal evaluation, the evaluator may contact the treating physician or other health care provider, to obtain such record(s). If the party fails to provide relevant medical records within 10 days after the date of the evaluation, and the evaluator is unable to obtain the records, the evaluator shall complete and serve the report to comply with the statutory time frames under section 38 of Title 8 of the California Code of Regulations. The evaluator shall note in the report that the records were not received within the required time period. Upon request by a party, or the Appeals Board, the evaluator shall complete a supplemental evaluation when the relevant medical records are received. For a supplemental report the evaluator

need not conduct an additional physical examination of the employee if the evaluator believes a review of the additional records is sufficient.

(j) The evaluator and the employee's treating physician(s) may consult as necessary to produce a complete and accurate report. The evaluator shall note within the report new or additional information received from the treating physician.

(k) The Appeals Board shall retain jurisdiction in all cases to determine disputes arising from objections and whether ex parte contact in violation of Labor Code section 4062.3 or this section of Title 8 of the California Code of Regulations has occurred. If any party communicates with an evaluator in violation of Labor Code section 4062.3, the Medical Director shall provide the aggrieved party with a new panel in which to select a new QME or the aggrieved party may elect to proceed with the original evaluator. Oral or written communications by the employee, or if the employee is deceased by the employee's dependent, made in the course of the examination or made at the request of the evaluator in connection with the examination shall not provide grounds for a new evaluator unless the Appeals Board has made a specific finding of an impermissible ex parte communication.

(l) In claims involving a date of injury prior to 1/1/2005 where the injured worker is represented by an attorney and the parties have decided to each select a separate Qualified Medical Evaluator, the provisions of this section shall not apply to the communications between a party and the QME selected by that party.

Authority cited: Sections 133, 139.2 and 5307.3, Labor Code.

Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.3, 4064 and 4067, Labor Code.

§ 35.5. Compliance by AMEs and QMEs with Administrative Director Evaluation and Reporting Guidelines

(a) Each evaluation examination and report completed pursuant to Labor Code sections 4060, 4061, 4062, 4062.1, 4062.2, 4064, 4067 or 5703.5 shall be performed in compliance with all appropriate evaluation procedures pursuant to this Chapter.

(b) Each reporting evaluator shall state in the body of the comprehensive medical-legal report the date the examination was completed and the street address at which the examination was performed. If the evaluator signs the report on any date other than the date the examination was completed, the evaluator shall enter the date the report is signed next to or near the signature on the report.

(c) The evaluator shall address all contested medical issues arising from all injuries reported on one or more claim forms prior to the date of the employee's appointment with the medical evaluator that are issues within the evaluator's scope of practice and areas of clinical competence. The reporting evaluator shall attempt to address each question raised by each party in the issue cover letter sent to the evaluator as provided in subdivision 35(a)(3).

(d) At the evaluator's earliest opportunity and no later than the date the report is served, the evaluator shall advise the parties in writing of any disputed medical issues outside of the evaluator's scope of practice and area of clinical competency in order that the parties may initiate the process for

obtaining an additional evaluation pursuant to section 4062.1 or 4062.2 of the Labor Code and these regulations in another specialty. In the case of an Agreed Panel QME or a panel QME, the evaluator shall send a copy of the written notification provided to the parties to the Medical Director at the same time. However, only a party's request for an additional panel, with the evaluator's written notice under this section attached, or an order by a Workers' Compensation Administrative Law Judge, will be acted upon by the Medical Director to issue a new QME panel in another specialty in the claim.

(e) In the event a new injury or illness is claimed involving the same type of body part or body system and the parties are the same, or in the event either party objects to any new medical issue within the evaluator's scope of practice and clinical competence, the parties shall utilize to the extent possible the same evaluator who reported previously.

(f) Unless the Appeals Board or a Workers' Compensation Administrative Law Judge orders otherwise or the parties agree otherwise, whenever a party is legally entitled to depose the evaluator, the evaluator shall make himself or herself available for deposition within at least most one hundred twenty (120) days of the notice of deposition and, upon the request of the unrepresented injured worker and whenever consistent with Labor Code section 5710, the deposition shall be held at the location at which the evaluation examination was performed, or at a facility or office chosen by the deposing party that is not more than 20 miles from the location of the evaluation examination.

(g) Whenever an Agreed Medical Evaluator or Qualified Medical Evaluator provides an opinion in a comprehensive medical/legal report on a disputed medical treatment issue, the evaluator's opinion shall be consistent with and apply the standards of evidence-based medicine set out in Division 1, Chapter 4.5, Subchapter 1, sections 9792.20 et seq of Title 8 of the California Code of Regulations (Medical Treatment Utilization Schedule). In the event the disputed medical treatment, condition or injury is not addressed by the Medical Treatment Utilization Schedule, the evaluator's medical opinion shall be consistent with and refer to other evidence-based medical treatment guidelines, peer reviewed studies and articles, if any, and otherwise shall explain the medical basis for the evaluator's reasoning and conclusions.

Authority cited: Sections 133, 139.2, 4062.3 and 5307.3, Labor Code.

Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4064, 4067, 4604.5, 4628, 5703.5, 5307.27 and 5710, Labor Code.

§ 41. Ethical Requirements

(a) All QMEs, regardless of whether the injured worker is represented by an attorney, shall:

(1) Maintain a clean, professional physician's office (as defined in section 1(y) at all times which shall contain functioning medical instruments and equipment appropriate to conducting the evaluation within the physician's scope of practice and a functioning business office phone with the phone number listed with the Medical Director for that location which a party may use to schedule an examination or to handle other matters related to a comprehensive medical/legal evaluation.

(2) Schedule all appointments for comprehensive medical-legal evaluations without regard to whether a worker is unrepresented or represented by an attorney. A QME shall not refuse to

schedule an appointment with an injured worker solely because the worker is not represented by an attorney or because a promise to reimburse or reimbursement is not made prior to the evaluation.

(3) Not request the employee to submit to an unnecessary exam or procedure.

(4) Refrain from treating or soliciting to provide medical treatment, medical supplies or medical devices to the injured worker.

(5) Communicate with the injured worker in a respectful, courteous and professional manner.

(6) Refrain from violating section 41.5 of Title 8 of the California Code of Regulations.

(7) Refrain from unilaterally rescheduling a panel QME examination more than two times in the same case.

(8) Refrain from cancelling a QME examination less than six (6) business days from the date the exam is scheduled without good cause and without providing a new examination date within thirty (30) calendar days of the date of cancellation.

(b) Evaluators selected from a QME panel provided by the Administrative Director shall not engage in ex parte communication in violation of Labor Code section 4062.3.

(c) All QMEs, regardless of whether the injured worker is represented by an attorney, shall with respect to his or her comprehensive medical-legal evaluation:

(1) Refuse any compensation or any other thing of value from any source contingent upon writing an opinion that in any way could be construed as unfavorable to a party to the case, and shall not request or accept payment or any other thing of value in connection with QME services in excess of the amount allowable pursuant to section 9494 of title 8 of the California Code of Regulations.

(2) Review all available relevant medical and non-medical records and/or facts necessary for an accurate and objective assessment of the contested medical issues in an injured worker's case before generating a written report. The report must list and summarize all medical and non-medical records reviewed as part of the evaluation.

(3) Render expert opinions or conclusions without regard to an injured worker's race, sex, national origin, religion, age, disability, or sexual preference.

(4) Render expert opinions or conclusions only on issues which the evaluator has adequate qualifications, education, and training. All conclusions shall be based on the facts and on the evaluator's training and specialty-based knowledge and shall be without bias either for or against the injured worker or the claims administrator, or if none the employer.

(5) Present a report that addresses all relevant and contested medical issues as presented on one or more claim forms, is ratable by the DEU, if applicable, and complies with all relevant guidelines of the Administrative Director.

(6) Date the report on the date it is completed and ready for signature and service on the parties. No report shall be dated on the date of the evaluation examination unless the full written text of the report is completed and ready for signature and service on that same date.

(7) Write all portions of the report that contain discussion of medical issues, medical research used as the basis for medical determinations, and medical conclusions made by the evaluator. In the event more than one evaluator signs a single report, each signing physician shall clearly state those parts of the employee evaluation examination performed and the portions of the report discussion and conclusion drafted by the signing evaluator. Where a consultation report is obtained by an evaluator from a physician in a different specialty, the consultation report shall be incorporated by reference into the final report and appended to the referring QME's report.

(8) Serve the report as provided in these regulations at the same time on the employee and the claims administrator, or if none the employer, and on each of their attorneys, respectively.

(d) All aspects of all physical and/or psychological comprehensive medical-legal evaluations, including history taking, shall be directly related to contested medical issues as presented by any party or addressed in the reports of treating physician(s). No evaluator shall engage in any physical contact with the injured worker which is unnecessary to complete the examination.

(e) No physician certified by the Administrative Director as a QME, or his or her agent, shall contact an evaluator for the purpose of influencing that evaluator's opinions or conclusions in any comprehensive medical-legal evaluation or report.

(f) No evaluator shall schedule appointments to the extent that any injured worker will be required to wait for more than one hour at the evaluator's office prior to being seen for the previously agreed upon appointment time for an evaluation. An injured worker who is not seen by the evaluator within one hour may terminate the exam and request a replacement evaluator from the Administrative Director. No party shall be liable for the terminated exam. The evaluator may explain any reasons for the delay to the injured worker and, provided both parties agree, the evaluation may proceed or be rescheduled for a later date. If the evaluation is rescheduled, the evaluator shall provide notice of the new date of the evaluation to the parties within 5 business days after rescheduling the appointment.

(g) If the injured worker terminates the examination process based on an alleged violation of section 35(k), 40, 41(a) or 41.5 of Title 8 of the California Code of Regulations, and the Appeals Board later determines that good cause did not exist for the termination, the cost of the evaluation shall be deducted from the injured worker's award. A violation of section 40 or of any part of section 41(a) or 41.5 by the evaluator shall constitute good cause for purposes of an Appeals Board determination. No party shall be liable for any cost for medical reports or medical services delivered as a result of an exam terminated for good cause.

(h) Nothing in this section shall require an evaluator to undertake or continue a comprehensive medical-legal evaluation where the injured worker or his/her representative uses abusive language towards the evaluator or evaluator's staff or deliberately attempts to disrupt the operation of the evaluator's office in any way. The evaluator shall state under penalty of perjury, the facts supporting the termination of the evaluation process. Upon request, the Medical Director shall investigate the

facts and make a final determination of the issue(s).

(i) Nothing in this section shall require an evaluator selected from a panel to undertake or continue a comprehensive medical-legal evaluation where the injured worker is intoxicated or under the influence of any medication which impairs the injured worker's ability to participate in the evaluation process. The evaluator shall state under penalty of perjury, the facts supporting the termination of the evaluation process. Upon request, the Medical Director shall investigate the facts and make a final determination of the issue(s).

Authority cited: Sections 133, 139.2, 5307.3 and 5307.6, Labor Code.

Reference: Sections 139.2, 4060, 4061, 4062, 4062.1, 4062.2, 4062.3, 4062.5, 4067 and 4628, Labor Code.

§ 41.5. Conflicts of Interest by Medical Evaluators

(a) An evaluator shall not request or accept payment or any other thing of value in connection with QME services in excess of the amount allowable pursuant to section 9494 of title 8 of the California Code of Regulations, and shall not request or accept any compensation or other thing of value from any source that does or could create a conflict with his or her duties as an evaluator under the Labor Code or the regulations of the Administrative Director (Title 8 of the California Code of Regulations, Chapters 1 through 1.8, section 1 et seq) or of the Workers' Compensation Appeals Board (Title 8 of the California Code of Regulations, Chapters 1.9, sections 10600 through 10727) .

(b) A conflict with the duties of an evaluator as used in Labor Code section 139.2(o) means having a disqualifying conflict of interest with one or more of the persons or entities described in subdivision (c) and failing to disclose the fact of the conflict.

(c) The persons or entities with whom a disqualifying conflict of interest can exist are:

(1) The injured worker, or his or her attorney;

(2) The employer, or the employer's ~~attorney~~ workers' compensation insurer, third-party claims administrator, utilization review physician or other entity contracted to provide utilization review services pursuant to Section 4610

~~(3) The claims adjuster or insurer or third-party administrator, or their attorneys, respectively;~~

~~(4)~~ 3 Any primary treating physician or secondary physician for the employee, if the treatment provided by that physician is disputed in the case;

~~(5) The utilization review physician reviewer or expert reviewer, or utilization review organization, only if the opinion of that reviewer or that utilization review organization is disputed in the case;~~

~~(6)~~ 4 The surgical center in which the injured worker had, or is proposed to be used to have, surgery, only if the need for surgery is disputed in the case.

~~(7)~~ 5 Other purveyor of medical goods or medical services, only if the medical necessity for using

such goods or services is in dispute in the case.

(d) "Disqualifying Conflict of Interest" means the evaluator has any of the following relationships or interests with a person or entity listed in subdivision 41.5(c):

(1) A familial relationship of parent, child, grandparent, grandchild, sibling, uncle, aunt, nephew, niece, spouse, ~~financee~~ or cohabitant;

(2) A significant disqualifying financial interest, as defined below, including:

(A) Employment or a promise of employment;

(B) An interest of five (5) % or more in the fair market value of any form of business entity involved in workers' compensation matters, or of private real property or personal property, or in a leasehold interest;

(C) Five (5) % or more of the evaluator's income is received from direct referrals by or from one or more contracts with a person or entity listed in subdivision 41.5(c), except that contracts for participation in a Medical Provider Network as defined under Labor Code section 4616 et seq shall be excluded;

(D) A financial interest as defined in Labor Code section 139.3 that would preclude referral by the evaluator to such a person or entity;

(E) A financial interest as defined under the Physician Ownership and Referral Act of 1993 (PORA) set out in Business and Professions Code sections 650.01 and 650.02 that would preclude referral by the evaluator to such a person or entity.

(3) A professional affiliation which means the evaluator performs services in the same medical group or other business entity comprised of medical evaluators who specialize in workers' compensation medical - legal evaluations;

(4) Any other relationship or interest not addressed by subdivisions (d)(1) through (d)(3) which would cause a person aware of the facts to reasonably entertain a doubt that the evaluator would be able to act with integrity and impartiality.

(e) An Agreed Medical Evaluator or a Qualified Medical Evaluator may disqualify himself or herself on the basis of a conflict of interest pursuant to this section whenever the evaluator has a relationship with a person or entity in a specific case, including doctor-patient, familial, financial or professional, that causes the evaluator to decide it would be unethical to perform a comprehensive medical-legal evaluation examination or to write a report in the case.

(f) An Agreed Medical Evaluator or Qualified Medical Evaluator who knows, or should know, that he or she has a disqualifying conflict of interest with any person or entity listed in subdivision 41.5(c), that also is involved in the specific workers' compensation claim identified to the evaluator, shall send written notification to the injured worker and the claims administrator, or if none the employer, or their respective attorneys if any, within five (5) business days of the evaluator

becoming aware of the conflict. The written notice shall include, at a minimum: 1) disclosure that a disqualifying conflict of interest exists; 2) the person or entity with whom the conflict arises; and 3) the category of conflict, such as familial, significant financial, or other type of ethical conflict. Whenever the evaluator declines to perform an evaluation due to disqualifying himself or herself pursuant to subdivision 41.5(e), the parties shall be entitled to a replacement QME or, in represented cases a replacement panel pursuant to section 31.5 of Title 8 of the California Code of Regulations. Whenever the evaluator notifies the parties of a conflict without stating that he or she declines to perform the evaluation, the parties shall follow the procedures set out in section 41.6 of Title 8 of the California Code of Regulations. In any case in which the injured worker is not represented by an attorney, the evaluator shall fax a copy of the notice of conflict to the Medical Unit of the Division of Workers' Compensation at the same time it is sent to the parties.

(g) Any injured worker or claims administrator or if none the employer, including his or her attorney respectively, who knows of, or becomes aware of, a potential disqualifying conflict of interest, as defined under this section, with a specific evaluator selected to perform a comprehensive medical/legal examination and report or a follow up examination and report, shall notify the selected evaluator in writing at the earliest opportunity and no later than within five (5) business days of becoming aware of the potential conflict, to enable the evaluator to determine whether the disqualifying conflict exists. The notice shall include the person with whom the alleged conflict exists and the nature of the conflict. A copy of this notice shall be served on the opposing party at the same time as it is sent to the evaluator. The evaluator shall review the information provided and advise the parties in writing within five (5) business days of receipt of the notice whether the evaluator has a conflict of interest as specified in this section.

Authority cited: Sections 133, 139.2(o) and 5307.3, Labor Code.

Reference: Sections 139.2 and 139.3, Labor Code; and Sections 650.01 and 650.02, Business and Professions Code.